IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1211 OF 2003

IN

SUIT NO. 4411 OF 1997

I.C.I.C.I. Bank Ltd., .. Plaintiffs.

Vs.

J.K.Synthetics Ltd., .. Defendants.

And

State of Maharashtra .. Respondents.

Mr. Arun Siwach i/by Amarchand Mangaldas
& S.A. Shroff & Co. for Plaintiffs.

Mr. P.K. Samdani with Mehta i/by M. Ranchoddas
& Co. in support defendant no.1.

Mr. Khooshnum Daviervala i/by Mulla & Mulla
& CBC for Def. No. 17.

Mr. Mayura More i/by Little & co.
for Defendant NO. 13.

Mr. Niranjan Pandit, AGP.

Mr. M.V. Deshpande Court Receiver present.

CORAM : S.U.KAMDAR, J.

DATE : 13th December,2004.

ORAL JUDGMENT :

1. The present chamber summons is taken out under rule 591 of the Bombay High Court (Original Side) Rules, 1980 inter alia seeking a reduction in the fees charged by the Court Receiver in accordance with the provisions thereof.

2. Some of the material facts of the present case briefly enumerated are as under :-

3. A suit was filed on 20.11.1997 for recovery of aggregate amount of Rs. 1,01,29,33,563/- and for various other reliefs. An interim application being Notice of Motion No. 3 of 1997 was moved. On 7.1.1998 this Court appointed Court Receiver, High Court, Bombay as Receiver in respect of the properties of the 1st respondent described in Exhibits A-1 to A-5 of the plaint. The Receiver was also appointed in respect of the goods, movables and bankers goods described in Exhibits B-1 to B-7 with all powers under Order XL Rule 1 of the Code of Civil Procedure of 1908. Under the said order it was ordered that the defendant no. 1 should be appointed as agent of the Court Receiver in respect of the said properties. However, defendant no. 1 opted to act as agent only in respect the two running units at Gotan and Nimbahera in the State of Rajasthan. In respect of other properties the defendant no. 1 declined to act as the agent of the

Court Receiver.

4. Sometime in or about January 1998, Defendant No. 1 filed an application before the BIFR under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 being the case Reference No. 22 of 1998. The said reference which was made to the BIFR was rejected and according to the defendant no.1 an appeal is pending before the appellate authority of Industrial and Financial Reconstruction Board. By an order dated 23.1.2003, the appellate authority has framed the scheme. In the meantime the main suit On 20.12.2002 the Debt Recovery Tribunal, Bombay appointed one Seven Star Security Services India Private Limited as the private Receiver in substitution of the Court Receiver, High Court, Bombay. Pursuant to the said order new Receiver being appointed, the Court Receiver, High Court, Bombay was directed to transfer the amount lying with the Court Receiver, High Court Bombay to the said Seven Star Security Services India Pvt. Ltd., The Court Receiver, High Court, Bombay, has accordingly, transferred the sum of Rs. 29.5 crores in or about January 2003. According to the defendant no. 1 the Court Receiver, High Court, Bombay had with him a royalty amount of Rs.29,73,99,998/- upto 31.12.2003 whereas the amount transferred was Rs. 29.5 crores. On enquiry being made, the defendant no. 1 was

informed that Court Receiver, High Court Bombay has charged a sum of Rs. 1,69,03,000/- as and by way of his fees under rule 591 of the High Court Rules by computing the amount at the rate of 6% on the royalty and licence fee and 5% on the interest earned on investment which the Court Receiver effected. The said sum of Rs. 1,69,03,000/- has been debited for the years 1999 to 2002 as commission.

5. It is this amount of deduction by the Court Receiver, High court, Bombay which has been challenged by the defendant no. 1 by taking out the present application and the defendant no. 1 seeks an order under rule 591 that the amount so fixed by the Court Receiver must be reduced.

6. The present chamber summons was earlier disposed of by the order and judgment of the learned Single Judge fixing the amount of Rs. 10 lacs as an ad hoc amount to be received by the Court Receiver, High Court, Bombay under rule 591. The State Government preferred an appeal against the said order being Appeal No. 477 of 2004. By an order dated 1.9.2004, of the Division Bench of this Court the said order has been set aside and the matter is remanded back to the learned Single Judge with inter alia an observation that for exercise of power under rule 591 of the High Court Rules, the Judge in

Chamber is required to give reasons and the discretion conferred thereunder has to be judiciously exercised on the basis of the fundamental principles of law.

7. The learned counsel for the defendant no. 1 in support of the chamber summons has placed before me the following contentions. Firstly, it has been contended by him that there is a power in this Court as a Chamber Judge to reduce the Court Receiver's charges and fees which has been fixed in accordance with the scale prescribed under rule 591 and this Court should exercise such a power and reduce the amount which has been deducted by the Court Receiver as his charges and commission. He has contended that the amount of Rs. 1,63,03,000/- which has been deducted is disproportionate and highly exaggerated though it is in accordance with the scale prescribed under the High Court Rule 591. He further pointed out to me that under rule 592 the Court Receiver is also entitled to charge certain amounts towards the management and office expenses including his salary. Secondly, it has been contended by the learned counsel for the defendant no. 1 that the entitlement of the Receiver to charge fees and/or commission has to be commensurate with the efforts put by him, work undertaken by him and the expenses incurred by him. The learned counsel for the defendant no. 1 has taken me through the report of

the Court Receiver which has been filed pursuant to the earlier order passed by Vajifdar, J. to show that the work put by the Court Receiver and the expenditure incurred by the Court Receiver is not in commensurate with the deductions made by him and, therefore, the amount deducted by the Court Receiver is highly unreasonable and the same should be reduced by exercising power under Rule 591. Thirdly, it has been contended by the learned counsel for defendant no. 1 that the company being in BIFR and declared as a sick undertaking under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, the company is in need of the funds and, therefore, such a huge amount of money should not be permitted to be deducted by the Court Receiver and that the Court Receiver should be directed to refund part of the amount since the same is needed by the company for its rehabilitation scheme.

8. In support of the aforesaid contentions, the learned counsel for the defendant no. 1 has relied upon two judgments (i) N. Javadevappa v. G. Nanjundappa and another, reported in AIR 1976 Karnataka 27 and (ii) Gorrela Venkata Satteyya and others vs. Mulibai and others, reported in AIR 1955 Andhra 274 and it has been contended that the principle always has been that the Receiver is entitled to the remuneration commission and charges

in commensurate with the work and efforts put by him and not otherwise. It is further contended that while fixing the rates of charges and commission, the Court Receiver's work has to be taken into consideration by the Court and, thereafter only the amount can be so fixed and charged under rule 591 of the High Court (Original Side ) Rules. The learned counsel has further faintly contended that there was a theft in respect of certain plant and machinery in respect of which the Court Receiver was appointed and he was in possession and, therefore, also he contended that the amount claimed by him is disproportionate and should be reduced accordingly.

9. The learned counsel for the State Government has filed an affidavit dated 12.12.2004. In effect the affidavit does not disclose any details or any contentions save and except passing of the resolution dated 29.11.2004 cancelling its previous resolution reducing the amount deductible pursuant to the orders passed by this Court. It has been averred in the affidavit that the said orders having been set aside the aforesaid resolution is also being cancelled.

10. I have considered the rival submissions between the parties. There are two factors which are required to be set out at the outset before I deal with the issue at hand. Firstly, on the

Original Side of High court of Mumbai, the office of the Court Receiver is maintained by the High Court in its regular discharge of function. On the Original Side in almost all the matters where the Receiver is appointed it is the Receiver of the High Court who takes charge and under the control and direction of the Court supervises and also manages the property and affairs thereof. The office of the Court Receiver, High Court, Bombay has staff regularly employed on the basis of permanent employment by the High Court and the office is maintained by the Court. The second significant factor which is also required to be considered is that as and by way of usual features and regular guidelines, rule 591 specifically prescribes the rates of charges and commission which has to be paid in each of the matters on the percentage basis. These provisions are provided for under the High Court (Original Side) Rules with an intention that there is a non-arbitrary yard stick in respect of the amount to be recovered by the Court Receiver for the services rendered by him. The High Court (Original Side) Rules are framed in exercise of power conferred on the High Court under the provisions of the Civil Procedure Code. On the Original Side of the High Court it is not the case like in the other cases where private Receivers are appointed as the Court Receiver and thus his remuneration of the amount charged by him for fees

and commission is to be regulated by the Court. It is undoubtedly true that even under Rule 591 ultimate control is vested with the Court and under the Rules a discretion is conferred on the Chamber Judge to reduce the amount chargeable by the Court Receiver. However, the issue which is to be determined is whether the case has been made out by the defendant no. 1 for reduction of charges and/or deviation from the fees prescribed under rule 591 of the Original Side Rules.

11. The learned counsel for the defendant no. 1 has vehemently contended that the services put in by the Court Receiver is a meagre service and is not in commensurate with the amount deducted by him. I posed a question to the learned counsel for the defendant no. 1 as to the basis on which the computation can be effected of the amount to be charged for the services rendered. The learned counsel for the defendant no. 1 has no answer save and except that it should be fixed ad hoc by the Court in exercise of power conferred under rule 591 of the Original Side Rules.

12. The learned counsel for the defendant no. 1 thereafter pointed out the aforesaid two authorities (i) N. Javadevappa v. G. Nanjundappa and another, (supra) and (ii) Gorrela Venkata Satteyya and others vs. Mulibai and others, (supra) and vehemently

contended that there has always been a principle that the amount to be fixed for the Court Receiver by the Court has to be in accordance with the remuneration payable to such Receiver on the basis of work put in by him. Firstly, in both the aforesaid judgments there was a private receiver and not a Court Receiver as in the present case. When it is the case of the Private Receiver the amount has to be fixed by the Court and while fixing the amount the Court is required to go into the basis on which the remuneration and the charge should be computed. In the present case, the amount has been fixed on the percentage basis under rule 591 of the High Court (Original Side) Rules and accordingly, the Court Receiver, High Court, Bombay fixed commission and charge and deducted the same. The question is whether the present matter requires a departure from the said normal rule. In my opinion, for departing from a normal rule there should be abnormal circumstances. In my further opinion that such abnormal and extraordinary circumstances must be such which also makes out a special case for departing from such a normal yard sticks. The contention of the learned counsel for defendant no. 1 in the present case is that there are such abnormal and/or extraordinary circumstances and, therefore, reduction should be made. I do not find any such abnormal or extraordinary circumstance for exercising power and jurisdiction under rule 591.

In my opinion, such rule can be exercised where the amount received is much less than the claim in the suit itself or where a party to the suit is financially very weaker strata of the society, or widow or minor children. In the present case, no such circumstances exist. In my view, therefore, there is no ground whatsoever to exercise jurisdiction vested under rule 591. Apart therefrom, it is possible that in a particular suit a Court Receiver deducts much more amount then what services has been rendered by him. But is also equally possible that in other matter where he has spent large amount of time and work put in, he would be entitled to a smaller amount by virtue of fixation of his charges on percentage basis. In my view, therefore,the contention raised by the learned counsel for the defendant no. 1 by relying upon the authorities in respect of a private Receiver has no merits and/or without any substance and thus liable to be rejected. In my opinion, therefore, no case has been made out by the defendant no. 1 for reduction of any amount of Receiver's charges and expenses.

13. The exercise which the learned counsel for the defendant no.1 seeks me to undertake of ascertaining actual amount payable towards the services rendered is almost impossible. Furthermore, if this yard stick is applied then in

every matter the Chamber Judge will require to recompute the amount of fees and charges payable to the Court Receiver inspite of the rates fixed under rule 591 on the basis of services rendered by him in each and every matter. I am of the view that to permit such an exercise would mean to give a go-by to rule 591 and discretion vested in the Court under rule 591 to reduce the fees and charges would be a normal feature. I am not inclined to interpret rule 591 of High Court (Original Side) Rules in such a manner to make an exception therein as a rule.

14. In view thereof, I dismiss the Chamber Summons. However, there shall be no order as to costs.